

On December 14, 2007 appellant, a 29-year-old painting worker, filed an occupational disease claim (Form CA-2) for bilateral hearing loss. He attributed his condition to noise exposure produced by equipment and machinery at work. Appellant first became aware of his

hearing loss on June 6, 2007 and realized it was caused by his federal employment on June 28, 2007.

Appellant submitted information concerning his employment history and audiograms conducted between June 17, 2003 and November 11, 2007.

On December 10, 2007 appellant filed a schedule award claim (Form CA-7).

The Office referred appellant, together with a statement of accepted facts to Dr. Meredith Pang, a Board-certified otolaryngologist, for a second opinion evaluation.

By report dated March 20, 2008, Dr. Pang reported findings on examination and diagnosed appellant with bilateral sensorineural hearing loss. An audiogram conducted on March 20, 2008 revealed "initially elevated and inconsistent right threshold hearing results" and that "repeated testing improved the accuracy [of the results.]" The March 20, 2008 audiogram reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second levels and showed the following decibel losses: 25, 20, 15 and 35 in the right ear and 25, 20, 15 and 20 in the left ear. Dr. Pang opined that employment-related noise exposure aggravated appellant's hearing loss and that his hearing loss, though present, was not ratable.

By decision dated April 4, 2008, the Office accepted appellant's claim for bilateral hearing loss. It referred Dr. Pang's report to the Office medical adviser to determine the percentage of permanent employment-related hearing loss.

By report dated April 29, 2008, the Office medical adviser reported that, based on the calculations specified by the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and the March 20, 2008 audiogram revealed that appellant had a zero percent binaural hearing loss and, therefore, his hearing loss was not ratable.

By decision dated May 14, 2008, the Office denied appellant's schedule award claim because the evidence of record established that his hearing loss was not ratable.

On June 20, 2008 appellant requested reconsideration.

Appellant submitted a personal note dated June 3, 2008.

Appellant submitted a copy of the Office medical adviser's April 29, 2008 report as well as a copy of an audiogram conducted on November 1, 2007. He also submitted results from a May 19, 2008 audiogram conducted by the employing establishment. The audiogram reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second levels and showed the following decibel losses: 40, 50, 45 and 70 in the right ear and 50, 55, 50 and 45 in the left ear.

The Office referred the May 19, 2008 audiogram, together with a list of questions, to the Office medical adviser.

By report dated October 24, 2008, the Office medical adviser opined that appellant's hearing loss was aggravated by his federal employment and diagnosed him with bilateral high frequency neurosensory hearing loss. He noted that the May 19, 2008 audiogram revealed flat

moderate loss but, because it lacked speech testing and bone conduction scores, he concluded that this audiogram was incomplete. The Office medical adviser selected the results of the March 20, 2008 audiogram over the May 19, 2008 audiogram because of “the history of inconsistent responses and lack of a complete audiogram on May 19, 2008.”

By decision dated November 19, 2008, the Office denied modification of its May 14, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of schedule members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In order to establish an employment-related hearing loss, the Board requires that the employee undergo both audiometric and otologic examination, that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist, that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology, that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings, that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association, that the audiometric test results included both bone conduction and pure-tone air conduction thresholds, speech reception thresholds and monaural discrimination scores and that the otolaryngologist report must include: date and hour of examination, date and hour of the employee’s last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2002).

³ *Id.*

⁴ *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993). *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8 (a) September 1995.

⁵ A.M.A., *Guides* 250 (5th ed. 2001).

⁶ *Id.*

deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁷ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.⁸ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six, to arrive at the amount of the binaural loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.

ANALYSIS

The Office accepted that appellant sustained bilateral hearing loss caused by his federal employment. The issue to resolve is whether his hearing loss is ratable such that he is entitled to a schedule award. This is a medical issue which can only be proven by probative rationalized medical evidence. Appellant has not submitted such evidence and, therefore, the Office properly denied his schedule award claim.

On March 20, 2008 Dr. Pang provided narrative and audiometric reports meeting all the criteria set by the Office. He opined that the employment-related noise exposure aggravated appellant's hearing loss and that his hearing loss, though present, was not ratable. The audiometric report reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second levels and showed the following decibel losses: 25, 20, 15 and 35 in the right ear and 25, 20, 15 and 20 in the left ear.

Using Dr. Pang's audiometric report, the Office medical adviser found that appellant's hearing loss was not ratable. He applied the Office's formula to average appellant's hearing loss at 500, 1,000, 2,000 and 3,000 cycles per second. In the right ear, Dr. Pang added 25, 20, 15 and 35 and divided by 4, resulting in an average hearing loss of 23.75 decibels. The Office medical adviser then subtracted the 25 decibel fence and multiplied by 1.5, resulting in a zero percent loss in the right ear. For the left ear, adding 25, 20, 15 and 20 produced a sum of 80 which, divided by 4, resulted in an average hearing loss of 20 decibels. After subtracting the 25 decibel fence and multiplying by 1.5, the Office medical adviser found a zero percent hearing loss in the left ear. He concluded that appellant's hearing loss was not ratable. The Board finds that the Office medical adviser properly applied the Office's protocols to the March 20, 2008 audiogram. Therefore, appellant's hearing loss is not compensable for schedule award purposes.

After the Office denied appellant's claim, he submitted November 1, 2007 and May 19, 2008 audiometric reports. Although these reports demonstrated varying degrees of hearing loss they are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by the Office. For example, these reports lack speech testing and bone conduction scores and were not prepared or certified as accurate by a "physician" as defined by the Act.¹⁰ It

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

is appellant's burden to submit a properly certified audiogram to the Office.¹¹ The Office is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and is insufficient to satisfy his burden of proof.

The Board finds that appellant is not entitled to a schedule award because he did not satisfy his burden of proof to establish that he sustained a ratable hearing loss in either ear.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2008 is affirmed.

Issued: November 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ *Id.*